APPENDIX 1.

ARTICLE 1819, REVISED CIVIL STATUTES OF TEXAS 1925, AS AMENDED.

Article 1819. The appellate jurisdiction of the Courts of Civil Appeals shall extend to all civil cases within the limits of their respective districts of which the District Courts and County Courts have or assume jurisdiction when the amount in controversy or the judgment rendered shall exceed One Hundred Dollars exclusive of interest and costs.

APPENDIX 2.

ARTICLE 2123, REVISED CIVIL STATUTES OF TEXAS 1925.

Article 2123. The right to trial by jury shall remain inviolate, subject to the following rules and regulations.

APPENDIX 3.

ARTICLE 2178, REVISED CIVIL STATUTES OF TEXAS 1925.

Article 2178. Cases brought up from inferior courts shall be tried de novo.

APPENDIX 4.

ARTICLE 2249, REVISED CIVIL STATUTES OF TEXAS 1925.

Article 2249. An appeal or Writ of Error may be taken to the Court of Civil Appeals from every final judgment of the district court in civil cases, and from every final judgment in the county court in civil cases of which the county court has original jurisdiction, and from every final judgment of the county court in civil cases in which the court has appellate jurisdiction, where the judgment or amount in controversy exceeds one hundred dollars exclusive of interest and costs.

APPENDIX 5.

ARTICLE 2388, REVISED CIVIL STATUTES OF TEXAS 1925.

Article 2388. The pleadings shall be oral, except where otherwise specially provided; but a brief statement thereof may be noted on the docket.

APPENDIX 6.

JUDICIAL CODE, AS AMENDED, TITLE 28, SECTION 344 (b), U.S.C.A.

Sec. 344 (b). It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph.

APPENDIX 7.

FAIR LABOR STANDARDS ACT OF 1938, TITLE 29, CH. 8, U.S.C.A.

Sec. 203 (b). "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.

Sec. 206 (a). Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates--

(1) during the first year from the effective date of this section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 208, whichever is lower, and

(4) at any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the Administrator issued under section 208.

(5) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Administrator, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers.

Sec. 207 (a). No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce--

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

Sec. 207 (c). In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged; and in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables, or in the first processing, within the area of production (as defined by the Administrator), of any agricultural or horticultural commodity during seasonal operations, or in handling, slaughtering, or dressing poultry or livestock, the provisions of subsection (a), during a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, shall not apply to his employees in any place of employment where he is so engaged.

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Supreme Court of the United States

OCTOBER TERM, 1940

No. 929

JAMES W. ROLAND,
Petitioner and Appellant below,

vs.

PORT COMPRESS COMPANY,
Respondent and Appellee below.

Reply to Petition for Writ of Certiorari to the County Court of Nueces County, Texas, and Brief in Support Thereof.

TO THE HONORABLE CHARLES EVANS HUGHES, CHIEF JUSTICE OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your respondent respectfully shows:

I.

Summary Statement of the Matter Involved

Petitioner, James W. Roland, was employed by the Port Compress Company on the 29th day of July, 1939, and worked for a period of slightly more than five weeks. Under the terms of his employment, as orally plead below, petitioner's duties were to transfer, by

means of a tractor trailer, compressed bales of cotton from the Port Compress Company's plant to shipside at the Port of Corpus Christi, the port being approximately two miles from the compress plant. Petitioner instituted suit for overtime, at the rate of time and a half, under the Fair Labor Standards Act of 1929, Title 29, Chapter 8, et seq., U. S. C. A., in the Justice of the Peace Court in Harris County, Texas, the case subsequently being removed for trial to the Justice of the Peace Court in Nueces County, where, after trial on the merits, on oral pleadings, judgment was entered in favor of the Port Compress Company, from which an appeal was duly taken to the County Court of Nueces County, Texas, where the trial was heard de novo, under appropriate State Statutes, on December 7, 1940. Petitioner plead orally substantially as in the Justice Court, whereupon respondent presented its plea in abatement and plead orally, and the Court then and there sustained the contentions of respondent and dismissed this cause without the hearing of evidence and after considering only the oral pleadings of the parties and the plea in abatement. The record brought forward fails to contain the substance of the oral pleadings, either of petitioner or of respondent, and does not contain respondent's plea in abatement; nor does the record contain a complete transcript of matters transpiring on the trial in the Justice's Court.

The record contains a purported deposition of petitioner (Tr. pp. 5-9), which occupies no proper place in the record, since the deposition was not offered in evidence and its contents not heard by the trial Court.

Respondent was not apprised that the motion for new trial (Tr. p. 12), was filed, nor was it apprised of the hearing thereon, nor of the order overruling same, nor of the request for findings of fact and conclusions

of law, nor of the preparation and filing of such by the trial Judge (Tr. pp. 13-14), until long after the term at which such cause had been heard had ended and, in fact, not until notice was given of the filing of the petition for writ of certiorari.

II.

Reasons Relied Upon for Denial of the Writ.

The petition should be denied, for the following reasons:

1. The pleadings in the Court below being oral, the Appellate Court must presume that the order of dismissal was correct and in conformity with the pleadings.

ARGUMENT—Point One

The trial Court having heard petitioner's oral pleadings, under which, as found by the Court, petitioner attempted to plead a cause of action under the Wages and Hours Act, for time and a half overtime and, among other allegations, as shown in petitioner's summary statement of the matter involved, having plead that petitioner was employed to transfer, by means of a tractor trailer, cotton from the Port Compress Company's plant to ships docked at shipside at the Port of Corpus Christi, and having heard respondent's oral reply thereto, as well as respondent's plea in abatement, and having thereupon sustained respondent's plea in abatement, without hearing further evidence, it will be presumed by the Appellate Court that the order of dismissal was based upon and supported by the pleadings, and that the Court's findings of fact and conclusions of law had support therein as well. It will, also, be presumed that the trial Court was cor-